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Supreme Court of the United States

October Term, 1959

No. 472

UNITED STATES OF AMERICA, *ex rel.* SOL R. RAUCH and HAROLD RAUCH,

Relators-Petitioners,

against

JOSEPH STOCKINGER and ALEX KRINSKY,

Respondents.

SUPPLEMENTAL PETITION FOR LEAVE TO FILE THE PETITION FOR RE-HEARING OF A PRIOR APPLICATION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Counsel for the relators-petitioners herein has very carefully studied the brief submitted in opposition on behalf of the Attorney General of the Province of Ontario, Canada, as *amicus curiae.*

There are contained therein several erroneous conclusions and statements which compel this reply brief. It is respectfully submitted with the intent of clarifying the situation and to point out the dissimilarity of the authorities cited in the opposition brief.

A careful study of the opposing brief will definitely demonstrate that an attempt has been made to confuse the issues and the record facts, in the light of inapplicable citations of authority therein cited.

The petitioners have consistently urged and justifiably so, that the United States Commissioner before whom a so-called hearing was conducted had no jurisdiction to hear the same, much less to rule thereon.

There is no demonstration to the contrary in the instant opposing brief nor was there any in the opposing brief to the main petition, that there was compliance with Section 3184 of Title 18 of the United States Code because indisputably, there was no complaint against these petitioners filed with the Commissioner containing charges against them. It has been definitely held that in the absence of a valid and subsisting complaint, no proper foundation has been laid for the conduct of a hearing and similarly, no evidence could properly have been submitted or received thereat. Besides, what was submitted in the guise of evidence in the instant case, was purely hearsay.

On the several applications to the Courts by these petitioners and the appeals taken by them, the lack of jurisdiction was clearly pointed out.

It has been uniformly held and it is a well established and recognized principle of law that jurisdiction cannot be conferred by consent or even by implication when none basically existed. Indeed, this principle is quite elementary.

It must be remembered that the instant extradition proceedings are maintainable *only* when full compliance has been had with the applicable treaty provisions.

The treaty provisions applicable in the instant case clearly and unequivocally provide that in order to institute and maintain a valid hearing before the United States Commissioner, a complaint containing specific charges must be filed with the Commissioner.

In the instant case, what purportedly was filed as a complaint, is completely deficient and devoid of facts as to a recital of specific charges against the individual petitioners here.

What was set forth in the purported complaint was a recital of conclusions as to what happened before a Justice of the Peace in Canada, and a reference to an indictment in the foreign jurisdiction. That is not a sufficient com-

pliance with the Treaty provisions which require current charges to be specified in the complaint before the Commissioner.

It is true that the *White* v. *United States* case cited by these petitioners in their petition for leave to file a petition for rehearing of their prior application originated with bankruptcy proceedings.

The citations presently offered by the opposition likewise emanated with bankruptcy proceedings. However, the indictments in those cases recite the necessary ingredients required for indictments for concealment of assets and where overt "acts" were not recited in those indictments, they did contain a recital that "a more particular description of all of the same (referring to the assets) being to the Grand Jurors, unknown."

In the instant case, the indictment from Canada does not contain the recital of any overt "acts" and neither does it contain any statement that "a more particular description of all of the same (referring to the assets), being to the Grand Jurors, unknown."

The foregoing distinction is quite clear. It renders the instant foreign indictment wholly defective and completely insufficient upon which to maintain extradition proceedings.

These petitioners pointed out in their instant main petition that they do not now nor did they heretofore seek, in this jurisdiction, a dismissal of the indictment because of the foregoing insufficiency but what they did urge was, that because of such insufficiency and defectiveness together with the incomplete complaint, there was no jurisdiction in the Commissioner to entertain the extradition proceedings nor to make any rulings with respect thereto.

In fact, it is these petitioners' contention that the entire proceedings before the United States Commissioner was a complete nullity. (Please see Contentions Nos. 1, 3 and 5 on pages 10, 20 and 23 of the petitioners' prior petition for the Writ of Certiorari.)

These petitioners further invite this Honorable Court's attention to the text contained on pages 3 and 4 of their prior petition for the Writ of Certiorari where they pointed out very succinctly, that the laws of the State of New York, together with the Treaty provisions controlled the hearing and disposition of the proceedings before the Commissioner. It is the total disregard of these specified requirements by the Commissioner and the lower courts which has brought this case to the attention of this distinguished tribunal for review, for which these petitioners reverently pray. (Please see Contention No. 2 on page 13 of the petitioners' prior petition for the Writ of Certiorari.)

The observation at the top of page 5 of the opposing brief on this application that "Every constitutional right of the relators-petitioners has been guarded and protected throughout all these proceedings * * *" is quite specious. Apparently, the Sixth Amendment to the Constitution is meaningless to that observer. That observer has not stated who did such purported guarding and protecting.

On the contrary, that same observer, according to the record, failed to prepare and submit to the Commissioner a proper complaint upon which to base the extradition proceedings and its conduct. It is this same observer who has up to the present time, failed to justify that omission. And, it is this same observer who now, undoubtedly through overzealousness, has attempted to confuse the issues and cite authorities which are clearly dissimilar, contrary to the established and recognized law and misleading.

Respectfully submitted,

MAX J. LEBOVER,
Attorney for Relators-Petitioners.

Certificate of Counsel

MAX J. LEBOYER, attorney for the petitioners, does hereby certify that in his opinion this Honorable Court overlooked the important features and points raised on the original application for the issuance of a writ of certiorari herein and also overlooked and misconstrued the applicability and effectiveness of the controlling decision of *White v. United States*, 67 F. (2) cited in this petition in support thereof.

I further certify that the foregoing supplemental petition for leave to file the petition for rehearing of the prior application for the issuance of the Writ of Certiorari directed to the Circuit Court of Appeals for the Second Circuit, is presented in good faith and not for delay.

MAX J. LEBOYER,
Attorney for Petitioners.